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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,607	10/27/2003	Brian E. Le Gette	GRAY032/01US	6475
7590 12/28/2005			EXAMINER	
Cooley Godward LLP One Freedom Square Reston Town Center 11951 Freedom Drive Reston, VA 20190-5656			SUTTON, ANDREW W	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 12/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/693,607	LE GETTE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrew W. Sutton	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8, drawn to an ear warmer with a proximal and distal portions, classified in class 2, subclass 208.
- II. Claims 9-17, drawn to ear warmer including a curved first portion, classified in class 2, subclass 171.4.
- III. Claims 18-23, drawn to a frame including an portion including a second portion having a thickness less than .06 inches, classified in class 2, subclass 200.1.
- IV. Claims 24-28, drawn to a ear portion including an extension portion, classified in class 2, subclass 209.
- V. Claims 29-31, drawn to a method of disposing an ear warmer, classified in class 2, subclass 171.5.

Group I claims an ear warmer including a proximate and distal portions that are not found in the other Groups. Group II claims a first portion being curved about a first axis that is not found in the other Groups. Group III claims an ear portion with a second portion that has a second thickness of less than 0.06 inches that is not found in the other Groups. Group IV claims an extension portion that is not found in the other Groups. Group V claims a method of disposing an ear warmer on the head that is not found in the other Groups.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II-V, Group II is not required for

Art Unit: 3765

Group I, and III-V, Group III is not required for Group I-II, and IV-V, Group IV is not required for Group I-III, and V, and Group V is not required for Group I-IV restriction for examination purposes as indicated is proper.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew W. Sutton whose telephone number is (571) 272-6093. The examiner can normally be reached on Monday - Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AWS  
12/23/05

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

Application/Control Number: 10/693,607  
Art Unit: 3765

Page 4